Q. Did Defendant's Exhibit C provide for an impartial umpire in case of disagreement?

A. Yes, sir.

Q. And during the period of 1950 and 1951 were the firms of Daniels & Kennedy and J. Arthur Kennedy & Son, Inc. members or associate members of the New York Shipping Association, and did they contribute toward the pension and welfare funds?

A. I do not keep track of the funds of the Association. My best recollection is that they were members during that period, and if they were they had to contribute.

Q. Now again referring to the Government's Exhibit 1-C and Government's Exhibit 1-D, may I ask you what the collective bargaining unit was under these two agreements?

Mr. BAUMAN: May I object on the further ground that the exhibits speak for themselves, they being already in evidence, that the witness testified to his construction as to what they apply to—but while he might conceivably qualify as an expert, does [161] not meet the objection that they speak for themselves.

The COURT: Of course they do speak for themselves but I will allow it if they do not change in any way a modified agreement.

Can you tell by looking at those agreements?

The WITNESS: I think so, your Honor.

The COURT: All right.

114-116 A. The International Longshoremen's Association and its affiliated locals were the party representing the employees.

Q. And what was the collective bargaining unit——

A. In both of these exhibits.

Q. Yes, and what was the collective bargaining unit in both of these exhibits—what area did it cover?

A. The Port of Greater New York and vicinity.

Q. And that bargaining unit has been in existence for how long?

A. Oh, prior to my association with the Shipping Association, but the records in the office, I believe, go back to about 1915 or 1916.

Q. And would that be so that throughout that period the Port of Greater New York was the collective bargaining unit?

A. Yes, sir.

Q. And was that unit recognized by the NLRB in which such an election was held?

A. That unit was recognized in the certification or the International Longshoremen's Association, independent as the collective bargaining agency, as the exclusive bargaining agency.

Q. Have you that certification with you?

A. I have something which was handed to me by the file clerk. I asked her for what had been received from the office of the National Labor Relations Board regarding certification and this was

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA, PETITIONER,

vs.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR CERTIORARI FILED JULY 29, 1955

CERTIORARI GRANTED OCTOBER 17, 1955

taken from the files of the New York Shipping Association (handing to Mr. Waldman).

Q. And does this paper that you have handed me, both the collective bargaining unit and the certification of who is the representative of employees?

A. It does.

Mr. WALDMAN: I offer it in evidence.

* * * * * * *

117 Q. Please look at the first paragraph of Government's Exhibit 1-C and Government's Exhibit 1-D and tell his Honor whether you can tell from those exhibits who, in the years 1950 and 1951, were recognized by the employers as the employees' collective bargaining agent in the Port of New York?

A. Yes, I can.

Q. Please tell the Court?

A. The International Longshoremen's Association and its affiliated locals.

Q. Now, did there come a time when the question as to who was a representative of employees in this port involving longshore labor, was challenged—the recognition as to who was the representative of employees.

* * * * * * *

118 A. The representation of employees by the ILA was challenged.

Q. And who challenged it, and when?

A. The organization originally known as International Longshoremen's Association, AF of L—American Federation of Labor—filed a petition for representation election with the National Labor Relations Board early in October 1953.

Mr. BAUMAN: I now renew my motion to strike on the grounds that this is clearly without the issues of the indictment.

The COURT: Yes. I will sustain the objection.

* * * * * * *

119 Mr. WALDMAN: Will your Honor permit the question to be answered, merely fixing the date of the challenge?

The COURT: All right, I will let him fix it.

Mr. WALDMAN: That is right.

By Mr. WALDMAN:

Q. Will you be good enough to answer it?

A. I think I said it was challenged early in October 1953.

Q. All right. Prior to that date was there any challenge from any source, either by a rival union or any group of employees as to who first—as to the bargaining unit adopted by the New York Shipping Administration and the ILA in their collective agreements?

Mr. BAUMAN: I——

Q. (Continuing) Concerning longshore labor.

Mr. BAUMAN: I now renew my objection on the ground that the question calls for a conclusion on the part of this witness, and on the grounds previously state.

The COURT: I will allow it. Overruled.

A. From the time of my personal connection with the New York Shipping Association, which I think was in 1933, there was no challenge as to representation for longshoremen. I must
120-122 qualify that to this extent: Some time after 1933—I do not recall the exact year—there was a challenge by a local group with respect to representation of tractor-drivers who are associated with gangs of longshoremen, and there was an informal hearing at the National Labor Relations Board, and the matter was dismissed. But that is the only thing I recall.

Q. The challenge was dismissed?

A. The challenge was dismissed.

Q. And that informal hearing or conference, that is one of the steps—I will withdraw that question.

Informal hearings and conferences are some of the steps taken by the NLRB in determining whether a complaint should lie or elections take place?

A. That is correct.

Q. And in that informal conference and hearing was the unit, the collective bargaining unit in the Port continued or fixed as the Port—portwide?

A. It was.

Q. And were the representatives of employees again held to be the ILA and its locals?

A. It was, because the other application was dismissed.

Q. Was dismissed?

A. Yes.

Q And other than that challenge and the result of the hearing and the conference that you had, and the result of that hearing and conference, had there been any other challenge up to on or about October 1953 as to the two propositions; The collective bargaining unit or as to whether the ILA and its locals were the representatives of employees?

A. None to my knowledge since 1933.

* * * * * *

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 281

UNITED STATES OF AMERICA, PETITIONER,

vs.

JOSEPH P. RYAN

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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Mr. WALDMAN: May I offer in evidence, purely for the purpose of showing the form used by the National Labor Relations Board, and for no other purpose (handing to Mr. Bauman).

* * * * * * *

130 (Marked Defendant's Exhibit E.)

By Mr. WALDMAN:

Q. Now I direct your attention to Defendant's Exhibit E in evidence and ask you whether you know what goes into the
131-140 blank after the words "It is hereby certified," in a case where an organization is elected as the representative of employees.

* * * * * * *

Q. Where an organization is elected as the representative of employees.

A. It would be the name of the union in there.

Q. Of the organization?

A. Of the organization.

Q. Now where an individual is elected as a representative of employees, what is inserted in that blank space?

A. The name of the individual.

* * * * * * *

141 COLLOQUY BETWEEN COURT AND COUNSEL

The COURT: Now on that point, Mr. Bauman, is it not a fair statement to say that this record is completely barren of any proof or any implication that the defendant received any money for a corrupt purpose or for the purpose of influencing a judgment in any manner, and that the most that can be concluded from the Government's case is that amounts of money were transferred in the form of Christmas gratuities or presents and were accepted by the defendant without explanation and without any surrounding
142 evidence indicating that they were used or attempted to be used to affect his course of conduct in connection with his union?

Mr. BAUMAN: No, I would say that that is not the situation. The record is not barren of circumstances indicating a contrary purpose.

The COURT: Well, I wish you would point them out to me because I am frank to say up to this point I fail to see what inferences you have been able to establish that indicate any such contrary purpose.

* * * * * * *

The COURT: Miss Kennedy testified that this defendant's name was one of a number of names taken from a Christmas list, and she brought this list down to the stenographer working in an open room with other employees, so there was apparently no office secret about it. The envelopes were prepared. The defendant's envelope was one of many other envelopes. Christmas presents are often exchanged from palm to palm, and this door wasn't kept locked for the purpose of this transaction. I think that the evidence indicates that it was the business office normally being occupied for its usual business, and that in the normal course of conduct James C. Kennedy got into the office and transferred the money, but I would like you to point out what was surreptitious about it—and assuming it was surreptitious, if you can assume that it was a surreptitious transfer of money, what is there in the record which would justify any trier of fact in concluding that there was a corrupt purpose in giving and a corrupt purpose in receiving, or that the donee's mind was intended to be corrupted to the disadvantage of the union employees whom he was representing.

Mr. BAUMAN: Does your Honor want me to address myself to the corrupt purpose in giving as well as the corrupt purpose in receiving?

143-144 The COURT: Any fact, because we have a very, very brief record here, and it seems to me that most of the basic facts are undisputed. It seems to me that we are left with a record which establishes the transfer of money for Christmas gratuities as a good-will gratuity by one business man to a union official.

So far as I can tell from this record there is not a single element of proof or a single implication indicating that the defendant was sought to be corrupted or was in fact corrupted, or that the bargaining power of the employees whom he represented as president of this International Longshoremen's Association was in any way impaired or diminished. Now if I am wrong, I want you to point that out. As I see it, we are left with a transfer of gratuities, Christmas presents, and that is all. If there is anything more to it than that, I wish you would tell me what there is in this case that would justify the inference that there is anything more to it.

* * * * * * *

145 Mr. BAUMAN: Of course I think it is perfectly clear, your Honor, but I should like to make it so—I am merely responding to your Honor's question as to whether there is any indication of evil purpose in this, and I am equally sure it is clear to your Honor that the Government's contention is that there need not be—that there need be none, that if in fact these are Christmas presents or any other kind of thing of value, under the terms of the

United States District Court
Southern District of New York

Criminal Docket

Crim. No. C143/80

Violation T. 29 Sec. 186(b)(d) USC

Being a representative of employees who were employed in an industry affecting commerce did unlawfully, wilfully and knowingly receive and accept sums of money

3 counts

THE UNITED STATES

vs.

JOSEPH P. RYAN

DOCKET ENTRIES

2-1-55. Defendant Joseph P. Ryan Fine $2500.00
2-1-55. Cash Acct. Deft. W & W Rec'd 5.00
2-4-55. Cash Acct. Deft. Pd U S Treas Disb. 5.00
12-4-53. Filed Indictment—Ordered Sealed Dimock *J.*
1-8-54. Sealed Indictment ordered opened on motion of the Govt. I. R. Kaufman *J.*
1-12-54. Pleads Not Guilty—Bail $2500. Paroled until 4 PM to give bail—Deft ordered fingerprinted I. R. Kaufman *J.*
5-12-54. Filed recognizance dated 1-12-54 for $2500. Mftrs. Cas Ins Co.
11-9-54. Trial begun before Palmieri, J. Deft. moves to dismiss. Denied. Deft. govt. and Court sign stipulation "Waiving Trial by Jury".
11-22-54. Trial cont'd.
2 11-23-54. Trial cont'd and concluded. Decision reversed. Bail cont'd. Palmieri, *J.*
11-24-54. Filed waiver of trial by jury. Approved, Palmieri, *J.*
December 9, 1954. Filed Transcript of record of proceedings, dated 11/19-22/23/54
January 7, 1955. Filed Transcript of record of proceedings, dated Jan. 12, 1954
1-24-55. Filed Opinion #21656 by Palmieri, *J.* The defendant is found guilty as charged under Counts 1, 2 and 3 of the indictment and is directed to surrender forthwith for the purpose of pre-sentence investigation. Sentence will be imposed on February 1, 1955, at 10:00 AM.

DOCKET ENTRIES

1-28-55. Filed motion for arrest of judgment. Memo endorsed: Motion Denied. Palmieri, *J.*

2-1-55. Filed Judgment # Six Months on counts 1-2-3 to run concurrently at a place of confinement to be designated by the Atty Genl. Fined $2500. to cover counts 1-2-3 and to stand committed until fine is paid or he is otherwise discharged according to law. Execution of prison sentence and payment of fine stayed pending appeal. Bail bond ordered continued during such stay. Palmieri, *J.*

2-1-55. Issued commitments and copies.

2-1-55. Filed Notice of Appeal. Clerk's fees $5

2-2-55. Filed bond pending appeal for $2500. Mftrs Cas Ins Co.

2-21-55. Filed transcript of record of proceedings, dated 2/1/55

3 In United States District Court

INDICTMENT—Filed Dec. 4, 1953

The Grand Jury charges:

1. On or about December 15, 1950, in the Southern District of New York, JOSEPH P. RYAN, the defendant, being a representative of employees who were employed in an industry affecting commerce, to wit, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive and accept money from J. Arthur Kennedy & Son, Inc., the employer of such employees, to wit, the sum of $1,000. (Title 29, Section 186(b)(d), United States Code).

Second Count

The Grand Jury further charges:

1. In and about April, 1951, in the Southern District of New York, JOSEPH P. RYAN, the defendant, being a representative of employees who were employed in an industry affecting commerce, to wit, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive and accept money from Daniels & Kennedy, Inc., the employer of such employees, to wit, the sum of $500. (Title 29, Section 186(b)(d), United States Code).

4-19 *Indictment*

Third Count

The Grand Jury further charges:

1. On or about December 15, 1951, in the Southern District of New York, JOSEPH P. RYAN, the defendant, being a representative

of employees who were employed in an industry affecting commerce, to wit, President of the International Longshoremen's Association, did unlawfully, wilfully and knowingly receive and accept money from Daniels & Kennedy, Inc., the employer of such employees, to wit, the sum of $1,000. (Title 29, Section 186(b)(d), United States Code).

.....

Foreman.

J. EDWARD LUMBARD,
United States Attorney.

* * * * * * *

20 **Excerpts from Testimony**

STIPULATION OF FACTS READ INTO RECORD

Mr. BAUMAN: I think in fairness to Mr. Waldman I ought to do something I overlooked doing before I put Miss Kennedy on the stand, and that is to read in evidence the stipulation that we signed.

May I read that?

The COURT: Yes.

Mr. BAUMAN (Reading):

"It is hereby stipulated, consented to and agreed, by and between counsel for the United States of America and counsel for the defendant Joseph P. Ryan, that the following facts are established for all purposes in the above-entitled case, and in said case only,

21 provided, however, that (1) the defendant is not precluded by this stipulation from raising any objections or making any motions before, during or after trial with respect to the sufficiency and validity of the indictment or the statute on which it is based and by this stipulation he does not waive in any way such motions or objections; (2) nothing herein contained shall be deemed an admission by the defendant personally; (3) all facts set forth in this stipulation in its entirety shall be deemed a part of the Government's case; (4) the defendant shall have the right to make such motions as he sees fit at the end of the Government's case as though the facts herein set forth had been established by the introduction of evidence in the Government's case; and (5) that this stipulation shall be used only on a trial of the defendant in the above-entitled case under Indictment No. C 143-80;

1. Joseph P. Ryan was President of the International Longshoremen's Association (hereinafter referred to as "ILA") in 1950 and 1951 and of the Atlantic Coast District of the ILA in 1950 and 1951.

2. The ILA in 1950 and 1951, and for many years prior thereto, was a labor organization, an international, having thousands of members, several geographical subdivisions known as "Coast Dis-

tricts" (including the Atlantic Coast District), Local District Councils, and several hundred local unions in various ports in the United States, Canada and certain territorial possessions of the United States; the ILA was governed in 1950 and 1951 by a Constitution, copies of the two Constitutions in effect during this period being annexed hereto and made a part hereof as Exhibits
22 "A" and "B"; the ILA, the Atlantic Coast District of the ILA, and the local unions affiliated with the ILA, bargained collectively on behalf of their members and others employed in longshore labor with employers of longshore labor in these ports, and entered into collective bargaining contracts with such employers; the ILA was affiliated with the American Federation of Labor; the Atlantic Coast District of the ILA and the local unions affiliated with the ILA were also labor organizations.

3. J. Arthur Kennedy & Son, Inc. in 1950 was a New York corporation engaged in the business of warehousing, trucking and stevedoring in New York City.

4. Daniels & Kennedy, Inc. in 1951 was a New York corporation engaged principally in the trucking business and also engaged in the warehousing and stevedoring business in New York City.

5. J. Arthur Kennedy & Son, Inc. in 1950 and Daniels & Kennedy, Inc. in 1951 were associate members of the New York Shipping Association (hereinafter referred to as "NYSA").

6. J. Arthur Kennedy & Son, Inc. in 1950, and Daniels & Kennedy, Inc. in 1951, by reason of their associate membership in the NYSA, gave authority to the NYSA to negotiate with the ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated locals, a collective bargaining agreement with respect to terms and conditions of employment of longshore labor employed by members of the NYSA, including the said firms in the Port of New York in 1950 and 1951 respectively.

23 *Stipulation of Facts Read into Record*

7. The ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions were the recognized bargaining agents for longshore labor in the Port of New York in 1950 and 1951.

8. The NYSA and ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions entered into a collective bargaining contract in 1950, effective October 1, 1949, with reference to the terms and conditions of employment of longshore labor in the Port of New York which was in effect from October 1, 1949 to September 30, 1951, except as to wage rates which were reopened and negotiated in 1950, the new wage rates being effective from October 1, 1950 to September 30, 1951.

9. The NYSA and ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions entered into a collective bar-

gaining contract dated December 4, 1951 with reference to the terms and conditions of employment of longshore labor in the Port of New York which was in effect October 1, 1951 to December 31, 1951.

10. Joseph P. Ryan, President of the ILA, was its principal executive officer in 1950 and 1951, and was a member of the "Committee for the International Longshoremen's Association and its Affiliated Locals" (hereinafter referred to as the "Wage Scale Committee of the ILA" and the "ILA Wage Scale Committee") which negotiated the collective bargaining contracts with the NYSA described in paragraphs 8 and 9 hereof.

11. The Wage Scale Committee of the ILA in 1950 and 1951, which is referred to in paragraph 10 hereof, consisted of over
100 persons from ports covering the entire Atlantic Coast
24 District, some being officers of the Atlantic Coast District and the great majority being selected by the various locals affiliated with the ILA in the Atlantic Coast District.

12. The said collective bargaining contracts referred to in paragraphs 8 and 9 were negotiated by the ILA Wage Scale Committee subject to action by the membership of the ILA Atlantic Coast District and were not made or executed without approval by said membership.

13. The collective bargaining contracts between the ILA and NYSA referred to in paragraphs 8 and 9 hereof were signed by the defendant, Joseph P. Ryan, and others in the manner shown by the photostatic copies of said contracts for 1950 and 1951 annexed hereto and made a part hereof as Exhibit "C" and Exhibit "D" respectively. The signatories on behalf of the ILA and its Atlantic Coast District were authorized in each case to sign the said contract by the ILA, the Atlantic Coast District, and the ILA's affiliated locals.

14. J. Arthur Kennedy & Son, Inc. in 1950 and Daniels & Kennedy, Inc. in 1951 were bound by the terms of the contracts described in paragraphs 8 and 9 hereof.

15. The local unions affiliated with the ILA, and the Atlantic Coast District of the ILA, were parties to and bound by the terms of the contracts described in paragraphs 8 and 9 here.

16. J. Arthur Kennedy & Son, Inc., in 1950 and Daniels & Kennedy, Inc. in 1951 employed, among others, members of local unions affiliated with the ILA and within the geographical area of
25-94 its Atlantic Coast District and such locals were bound by the terms of its contracts.

17. J. Arthur Kennedy & Son, Inc. in 1950 and Daniels & Kennedy, Inc. in 1951 were engaged in an industry affecting interstate Commerce.

18. The employees of J. Arthur Kennedy & Son, Inc. in 1950 and of Daniels & Kennedy, Inc. in 1951 who were members of local

unions affiliated with the ILA were employed in an industry affecting interstate commerce."

And it is signed by J. Edward Lumbard, United States Attorney, Attorney for United States of America and Waldman & Waldman, Attorneys for defendant.

And may the record show that it is this stipulation with reference to what your Honor interrogated the defendant and Mr. Waldman made his own statement a few moments ago.

The COURT: Yes, the record will so indicate.

Mr. BAUMAN: May I hand this up to the Court. The exhibits are attached (handing to Court).

The COURT: Is there any objection to marking this, for purposes of identification, since it is already a part of the record?

Mr. WALDMAN: Not at all, your Honor.

The COURT: Just so that it appears what papers I will be looking at. It may be marked for identification.

(Marked Government's Exhibit 1 for identification.)

* * * * * * *

95 JOSEPH MAYPER, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. WALDMAN:

Q. Mr. Mayper, you are an attorney and counselor at law?

A. I am.

Q. And have you been such for how long?

A. Oh, some 40 years or so.

Q. Are you counsel to the New York Shipping Association?

A. I am.

Q. Where are their offices?

A. 80 Broad Street, New York.

Q. Where are your offices, sir?

A. The same place.

Q. In the years 1950 and 1951, Mr. Mayper, in addition to being counsel for the New York Shipping Association, were you also secretary of the Association?

A. I was.

Q. And how long have you been secretary of the Association and counsel to it?

A. I think since 1933, I was secretary until about the middle of 1952. I became counsel for the Association, I believe it was
96 in 1948, and I am at present counsel.

Q. Now both as counsel and secretary of the Association,

did you participate in the negotiations and the making of collective agreements between the New York Shipping Association and the ILA?

A. I was present during the negotiations, at most of the negotiation meetings. I did not personally participate in the actual negotiations.

Q. And you have observed those negotiations?

A. Yes, sir.

Q. You kept records of those negotiations?

A. Only records that required the formulation of provisions of an agreement, either the offers or the proposals from time to time but not minutes—nothing of that kind.

Q. No, I did not mean minutes.

A. No, I am sorry.

Q. But you did keep records at each negotiation for the purpose of your own decisions and to get continuing information from session to session?

A. They were all—I am afraid I can't answer your question yes or no.

Q. All right.

A. They were all temporary notes that were made at the time, and when the agreement was finally formulated those notes were destroyed. They had no meaning.

Q. But you were the person who did that?

A. Most of it. Occasionally members of the Conference Committee did.

Mr. WALDMAN: Your Honor, may I have Government's Exhibit 1?

(The Court hands to Mr. Waldman.)

Mr. WALDMAN: Thank you very much.

Q. In the years 1950 and 1951 did there exist in your industry a pension plan?

A. Yes, sir.

Q. And who were the parties to it, who set it up?

97-105 A. As the result of an agreement, a collective bargaining agreement between the International Longshoremen's Association and the members of the New York Shipping Association, a joint committee of the International Longshoremen's Association and of the New York Shipping Association formulated a pension plan.

Q. Was that known as a joint committee?

A. Yes, sir.

Q. I direct your attention to Government's Exhibit 1-C, being the general cargo agreement between the New York Shipping Association on the one hand, and the International Longshoremen's

Association and its affiliated locals on the other, and ask you to please look at paragraph——

Mr. WALDMAN: Will your Honor excuse me for just one second?

The COURT: Certainly.

(Mr. Waldman examines.)

Q. —paragraph 25 of this exhibit, and tell us whether the joint committee of the employers and the union is the committee you have referred to in your previous answer, as having developed the pension plan (handing to witness).

A. That is correct. That is the reference.

Q. And can you tell the Court who on behalf of the ILA or the union represented the union in that negotiation?

* * * * * * * * *

106 Mr. WALDMAN: What was the last, please?

(Record read.)

A. My best recollection is that there was a—the entire joint committee consisted of ten people—five representing the union and five representing the employers.

Q. Was the defendant, Mr. Joseph P. Ryan, a member of the committee representing the union in that negotiation?

A. No, sir.

Q. As a result of the negotiations between the committee of five representing the New York Shipping Association and the committee of five representing the union, was there an agreement reached?

A. Ultimately, yes.

Q. When you say "Ultimately," how long did the negotiations last?

A. It lasted quite a number of months—possibly six or seven or eight months, something like that.

107 Q. And at the end of that period was a written agreement reached?

A. A written pension plan was prepared.

Q. Did you, in pursuance to a subpoena duces tecum, produce the original of that plan or a certified copy?

A. I have produced the original from the files of the Pension Board.

Q. Incidentally, are you co-counsel of the Pension Board?

A. I am.

Q. Representing the employers?

A. I am, sir.

Q. And my firm is co-counsel representing the Pension Board representing the union?

A. That is correct.

Q. All right.

A. This is the original plan taken from the files of the pension Board (handing).

Mr. WALDMAN: May I offer this plan in evidence—I withdraw that.

Q. Was the paper you handed me the plan that existed in 1950 and in 1951?

A. That existed in 1950. There were certain amendments made early in 1951.

Mr. WALDMAN: I offer the agreement in evidence (handing to Mr. Bauman).

108 (Marked Defendant's Exhibit A.)

Mr. WALDMAN: Your Honor, may we ask leave of the Court—and I hope with the consent of Mr. Bauman—to substitute for this original a photostat of the original so that the original can go back to the files?

Mr. BAUMAN: No objection.

Mr. WALDMAN: Thank you very much.

Q. Was an impartial umpire provided for under this plan?

A. One of the causes provides for the appointment of an impartial arbitrator in the event that the board of trustees or the Pension Board is unable to agree.

109 Q. Was a board of trustees set up under the plan?

A. It was.

Q. And what did that consist of?

A. Five representatives of the employers designated by the New York Shipping Association and five representatives of the employees designated by the International Longshoremen's Association.

Q. Now was there in existence, during the period of 1950 and 1951, a welfare plan in the industry in pursuance of the collective agreement, Government's Exhibits 1 and 2?

A. There was.

Q. And was that plan negotiated between representatives of the union and representatives of the New York Shipping Association?

A. It was.

Q. And who represented the union in that negotiation?

A. I am afraid my memory isn't too certain about that. The original negotiations I did not participate in, although I was present at a number of the sessions. I think again there was Mr. Connoly—Patrick Connoly, one of the officials of the ILA. I think

Harry Hasselgren,—I think he is now the International Secretary and treasurer of the ILA.

Well, I could refresh my memory if it is important.

Q. In any event, was Mr. Joseph P. Ryan, the defendant herein, a member of the committee representing the union in that negotiation?

A. I am not certain. I doubt it but I am not certain.

Q. Was an agreement reached as the result of the negotiations between the union representatives and the New York Shipping Association on the welfare plan?

A. There was.

Q. And was that agreement reduced to writing?

A. It was reduced to writing.

Q. And did you, in pursuance to a subpoena duces tecum, produce that agreement?

A. I did.

Q. Will you be good enough to hand it to me?

A. It says "Agreement and declaration of Trust between the employer members of the New York Shipping Association and the International Longshoremen's Association entered into as of"—entered into December 31, 1948 (handing to Mr. Waldman).

WALDMAN: I offer it in evidence (handing to Mr. Bauman).

Mr. BAUMAN: The same objection, sir.

The COURT: The same ruling.

(Marked Defendant's Exhibit B.)

Mr. WALDMAN: May we have the same stipulation, your Honor, as to substituting a photostat for this original?

Mr. BAUMAN: No objection.

The COURT: Yes.

By Mr. WALDMAN:

Q. Now in pursuance of that agreement, Defendant's Exhibit B, was a board of trustees set up?

111 A. It was.

Q. Did the board consist equally of representatives of the union, of an equal number of representatives of the union and of representatives of the New York Shipping Association?

A. Three from each side.

Q. Was provision made for an impartial umpire?

A. The provision, in the event of a difference or disagreement between members of the board.

Q. And this agreement that you produced, Defendant's Exhibit B, was in force and effect in the years 1950 and 1951?

A. No, that was in effect only in 1949, which was the first year.

I think it became operative January 1, 1949. There were other agreements in 1950.

Q. Well, was this plan renewed from year to year or period to period?

A. The plan was renewed as the collective bargaining agreements terminated every two years. There was a provision in the collective bargaining agreement that the welfare fund relationship continue with certain modifications here and there.

Mr. BAUMAN: I now further move——

Mr. WALDMAN: I think I will cure it in a minute.

Mr. BAUMAN: Fine.

Q. And did the extensions as you described continue the agreement, Defendant's Exhibit B, for [158] the period 1950 and 1951?

A. In the form—yes, in the form of a new agreement and declaration of trust.

* * * * * * *

112 Q. Have you brought with you, Mr. Mayper, the agreement which was in existence in 1950 and 1951 in connection with welfare?

A. I have.

Q. And is that based on the agreement, Defendant's Exhibit B?

A. It is a continuation of the same agreement with certain modifications (handing to Mr. Waldman).

Q. You are now handing me a paper. Is this paper that you just handed me the agreement which contains the renewals of Defendant's Exhibit B, with modifications?

A. Yes, sir.

Q. And was in existence in 1950 and 1951?

A. That is correct.

Mr. WALDMAN: I offer it in evidence (handing to Mr. Bauman).

Mr. BAUMAN: No objection.

(Marked Defendant's Exhibit C.)

113 By Mr. WALDMAN:

Q. Referring to Defendant's Exhibit C in evidence, could you tell the Court, please, whether the amendments contained in Defendant's Exhibit C affected the setting up of trustees?

A. It did.

Q. What was the effect of that?

A. The board of six—three representing the employers and three representing the union,—the employees designated in the same manner that I have testified before for the first agreement.

123-124 FRANK RUMINSKI, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By M. WALDMAN:

Q. Mr. Ruminski, what is your profession or business or occupation?

A. I am employed as assistant supervisor of mails, files and dockets for the National Labor Relations Board, 2 Park Avenue.

Q. Are you familiar with the various forms used by the National Labor Relations Board?

A. I am.

Q. How long have you been so employed?

A. 16 years, not counting the Army time.

Q. Did you, in pursuance to a subpoena duces tecum, produce the forms, certain forms used by the NLRB?

A. I did.

* * * * * * *

125-128 Q. Did you bring withyou a form of certification of representatives as used by the National Labor Relations Board or the Regional Office here at Park Avenue, wherein an individual is certified as a representative of employees?

A. I think you have reference to the Shenker Displays, Incorporated, Board No. 2-RM-371.

Q. Well, before you proceed to give us a specific form, may I ask you whether the National Labor Relations Board and the Regional Office of the National Labor Relations Board, in which you are the clerk, has forms wherein you certify as representatives of employees individuals as distinguished from organizations?

* * * * * * *

129 Q. I think my last question was whether you had a form applicable to individual members.

Now you are producing from your files a typical form of certification of representatives where an individual was elected as the representative of employees?

A. I have. The form number is the same, 765-A. I see the revision date is January '51.

Q. January '51?

A. Yes, sir.

Q. Now this form that you are now producing is a form used for both organizational or individual representatives, is that right?

A. That is right.

Act about which we are litigating they are prohibited between employers and representatives of employees.

* * * * * * *

The COURT: Do you claim that this statute is well drawn as a matter of draftsmanship?

Mr. BAUMAN: I do not know that I am qualified to——

The COURT: Well, I wish you would devote some attention to that in your brief because I am very seriously concerned about its adequacy as a penal statute, and I want to call your attention, while we are at it, to the fact that Section 302(g) of the bill, as passed by the Senate, provided the following which, unfortunately from the standpoint of legal draftsmanship, was omitted in the final bill. It provides as follows—and this bill was passed by the Senate—"For the purposes of this section, the term 'representative'"—and they were referring to this very provision—"means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and for the purposes of Section 301 includes any other
146 organization or fund of which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative."

That definition was completely left out in the final bill as passed, so that unless you go to other sections of the bill and reach out for other help in other directions, we have no standards by which the Court can determine with precision the nature of the legal relationship required by this law before the malum prohibitum descends upon the transaction and says that it is illegal.

Isn't it pretty clear that the—to make this a little simpler, isn't this statute so broad and so loosely drawn that it can be made of exactly what a Court wants to make of it, or a prosecutor wants to make of it?

Mr. BAUMAN: Not at all, sir.

The COURT: So that you can pick and choose among defendants and among persons to be prosecuted just about whomsoever you want? Isn't it that kind of statute?

Mr. BAUMAN: No, not a bit.

The COURT: Hasn't it been thoroughly emasculated according to the debates in Congress, not only to the point where it is inartistically drawn but inadequately drawn?

Mr. BAUMAN: No because it described the course of conduct proscribed for various classes of people.

The COURT: Now it would be very easy—and I want you to give this some thought and refer to it in your brief—it would be very

easy for me to think up a number of situations where Courts could very validly ascribe all kinds of different and conflicting meanings to this statutory provision, to the point where it could be taken to mean almost anything, and in that connection I want to draw your attention to one fact which I think is undisputed here among the lawyers, and that is that this statute has been on the books for something like eight years. The jurisprudence of our country and our Federal Courts is completely barren of any precedent
147 interpreting or clarifying this law, despite the fact that there has been notorious public knowledge of any number of situations involving the passage of money between employers and union representatives of various kinds.

How do you explain that fact? How is it that you, as a prosecutor, after eight years of the existence of this statute will come before a Federal Court and urge the application of this statute to the situation?

* * * * * * * *

IN UNITED STATES DISTRICT COURT

APPEARANCES:

Hon. J. Edward Lumbard, United States Attorney for the Southern District of New York, Attorney for United States, Arnold Bauman, George H. Bailey, and Dennis C. Mahoney, Esqs., of Counsel.

Waldman & Waldman, Esqs., Attorneys for Defendant, 305 Broadway, New York 7, N. Y., Louis Waldman, Seymour M. Waldman and Martin Markson, Esqs., of Counsel.

OPINION—January 24, 1955

PALMIERI, D. J.:

The defendant, Joseph P. Ryan, was indicted on three counts for alleged violation of section 302(b) of the Labor Manage-
148 ment Relations Act of 1947, 29 U. S. C. § 186(b). The indictment charged that on three separate occasions the defendant, while a representative of employees who were employed in an industry affecting commerce, unlawfully, wilfully and knowingly received and accepted sums of money from the employers of such employees.

The case was tried before me without a jury, and I find that the evidence established the following facts beyond a reasonable doubt. In 1950 and 1951, the years covered by the indictment, the defendant was president of the International Longshoremen's Association (ILA) and the Atlantic Coast District of the ILA. The ILA, the Atlantic Coast District of the ILA, and the ILA's affiliated local unions were the recognized collective bargaining agents for

longshore labor in the Port of New York. These organizations bargained for longshore labor in the Port of New York through the Wage Scale Committee of the ILA and were parties to collective bargaining agreements which governed the terms and conditions of employment of longshore labor in the Port. Defendant was a member of the Wage Scale Committee and was authorized to sign and did sign the agreements in effect in 1950 and 1951.

The Wage Scale Committee of the ILA bargained with the New York Shipping Association (NYSA), an association of employers of longshore labor, and J. Arthur Kennedy & Sons, Inc. was a member of the NYSA in 1950 and Daniels & Kennedy, Inc. was a member of the NYSA in 1951. Both of these concerns were engaged in stevedoring affecting commerce[1] and their employees were members of local unions affiliated with the ILA and were employed in an industry affecting commerce. The collective bargaining agreements entered into by the ILA and the NYSA were
149 binding on J. Arthur Kennedy & Son, Inc. (Kennedy & Son) and on Daniels and Kennedy, Inc. by reason of their membership in the NYSA.

In December of each year from 1946 to 1951, James C. Kennedy, president of Kennedy & Son and of Daniels & Kennedy, Inc., gave the defendant $1,000; and in April, 1951 James C. Kennedy gave the defendant $500. On each of these occasions James C. Kennedy visited the defendant in his office at 14th Street and Eighth Avenue in New York City and gave him the money. In December, 1950 the envelope containing the money had the following message written on it: "Merry Christmas to Joseph P. Ryan from J. Arthur Kennedy & Son, Inc." In December, 1951 the message on the envelope read: "Merry Christmas to Joseph P. Ryan from Daniels & Kennedy." In April, 1951 the envelope containing the money had no message written on it.

The law which defendant has allegedly violated provides that

> "It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value. 29 U. S. C. § 186(b)."

And it further provides that

> "Any person who wilfully violates any of the provisions of this section shall . . . be guilty of a misdemeanor. . . ." 29 U. S. C. § 186(d).

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[1] "Affecting commerce" is defined in section 101 of the Labor Management Relations Act, 1947, 29 U. S. C. § 152(7).

The defendant did not offer any evidence to controvert the proof that he had received and accepted money from James C. Kennedy. Since "employer" is defined as including "any person acting as an agent of an employer, directly or indirectly," Labor Management Relations Act, 1947, §§ 501(3), 101(2), 29 U. S. C.
150 §§ 142(3), 152(2), and James C. Kennedy was acting as an agent of Kennedy & Son and Daniels & Kennedy, Inc. when he gave the defendant money in 1950 and 1951, it is clear that the defendant received and accepted money from "the employer" of employees who were employed in an industry affecting commerce. But the defendant contends (1) that he cannot be considered to have violated 29 U. S. C. § 186(b) because he was not a "representative of . . . employees" within the meaning of the section, and (2) that even it should be decided that he was a "respresentative of . . . employees," the Government has not proved a wilful violation of section 186(b) and has therefore failed to prove that he committed a crime. 29 U. S. C. § 186(d).

Defendant's contention that he was not a "representative of . . . employees" within the meaning of section 186(b) is based on his belief that the phrase "representative of employees" as used throughout the Labor Management Relations Act of 1947 is a term of art for the collective bargaining agent for a group of employees. The defendant argues that neither he nor any other individual was the "representative" of the longshoremen who were members of the ILA, the Atlantic Coast District of the ILA, and the local unions affiliated with the ILA. In each case, he says, the union was the "representative of . . . employees."

According to the defendant, section 186 was enacted to insure that welfare funds would be administered for the benefit of union members and would not be used to further the purposes of the union or the union officers; and to limit check-off payments to labor organizations. The defendant argues that Congress intended to achieve these purposes, and did not intend to prohibit gifts to union officers from the employers of the men they represented.
151 The legislative history of section 186 does not sustain defendant's position. The provision that later became section 302(b) of the Labor Management Regulations Act, 947, 29 U.S.C. § 186 (b), was offered as an amendment to the bill by Senator Ball in behalf of himself, Senator Byrd and other Senators. See 93 Cong. Rec. 4677 (1947). A similar provision had been offered as an amendment to a bill by Senator Byrd in the preceding Congress. See 92 Cong. Rec. 4809 (1946). It had been passed but was vetoed by President Truman. So far as is material to the decision of the instant case, the Byrd amendment and the Ball amendment are similar to section 186.

Throughout the debate on the Ball amendment Senators evidenced

an awareness that section 186 would apply to payments to a union official by an employer of men whom the official represented. For example, while explaining the effect of section 186 on the floor of the Senate, Senator Taft said,

> "The amendment provides first that—
>
> It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees.
>
> That is, it may be said, in a case of extortion or a case where the union representative is shaking down the employer . . ." 93 Cong. Rec. 4746 (1947).

And Senator Pepper said,

> " . . . I simply wish to state that I wonder whether it can be correctly assumed that the application of this provision is to be limited to representatives of unions. Could it not be regarded as affecting contributions made to representatives of unorganized groups, and affecting, for instance contri-
> 152 butions provided by management for picnics or in aid of baseball teams which the employees often have, and other contributions of that character. Would not all such contributions be forbidden under the terms of this provision?"

Senator Ives replied, "Presumably that is correct. . . ." 93 Cong. Rec. 4748 (1947).

Similarly, the legislative history of the Byrd amendment shows that Congress intended section 186 to apply to payments to a union official as well as to a labor organization. Thus in explaining the amendment Senator Byrd said,

> "In general the amendment prohibit payments by an employer of money or other things of value to *labor representatives and labor organizations*, but in no manner does it prohibit the payment of such things to employees directly. . . ." 92 Cong. Rec. 4891 (1946),

and

> "My amendment would prevent an employer from paying a royalty to the *representative of a union*. He would be clearly liable, under the provisions of this amendment, if he paid a royalty or other money to the *representative of a labor union*, the purpose of which was to bribe that representative. . . ." 92 Cong. Rec. 4893 (1946).[2]

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[2] See also a debate between Senator Byrd and Senator Pepper on the scope of the amendment.

"Mr. Byrd. The amendment is very clear. It prevents only the payment to a representative of employees. . . ."

"Mr. Pepper. Mr. President, is it not patent on the face of the statement, in the first place, if John L. Lewis says . . . 'We will not go back into the mines unless you provide a health fund, even jointly administered,' that that is a thing of value? Is not that something demanded under paragraph (b) of the amendment, by a representative of a labor union?

" 'It shall be unlawful for any representative of any employees.' *Does anyone doubt that John L. Lewis is representing the employees?*

. . .

" 'To demand, receive, or accept, or agree to receive or accept, from the employer of such employees any money or other thing of value.' Does anyone deny that John L. Lewis in making demand even for a health fund that will be jointly administered, is demanding something that will be of value to the employees?

. . .

"Mr. Byrd. I am offering the amendment to prevent the payment of a royalty to the *representatives of a union.*

. . .

"Mr. Byrd. There is only one justification for the Senator's suggestion, in line 8, there I used the word 'demand', which is linked with the word 'receive' and 'accept' which follow it, and if the Senator objects to that, I am perfectly willing to strike it out." 92 Cong. Rec. 4900 (1946) and see 92 Cong. Rec. pp. 4895-4897, 5040-5041 (Senator Byrd), 5180-5181 (Senator Overton), 5428 (Senators Hatch and Tunnell), 5429 (Senators Hatch and Hoey) (1946).

153 The defendant argues that this legislative history is irrelevant because the conference committee changed section 186 and Congress enacted the provision as changed by the committee and not the provision which had been discussed on the floor of the Senate. The conference committee deleted from section 186 a definition of the word "representative" which was to have applied to that section, and included "representative" among the terms which were defined for the purposes of the Labor Management Relations Act, 1947, Cf. *Legislative History of the Labor Management Relations Act, 1947*, pp. 26, 29, 283, 290 (1948). From these changes the defendant infers that Congress intended "representative of employees" to mean only the collective bargaining agent for a group of employees.

The defendant's inference is a farfetched one. The report of the

154 — conferees on the part of the House of Representatives discusses section 186 under the heading "Restrictions on Payments to Employee Representatives." It states,

> "Section 302 of the Senate amendment contained a provision making it unlawful for any employer to pay any money or thing of value to any representative of his employees employed in an industry affecting commerce, or for any such representative to accept from the employer any money or other thing of value, with certain specified exceptions. . . .
>
> . . .
>
> "The conference agreement adopts the provisions of the Senate amendment with minor clarifying changes." H. R. Rept. No. 510, Conference Report, 80th Cong., 1st Sess. 66-67 (1947).

In the light of this language I cannot agree with the defendant's contention. For if the conferees intended to give "representative of employees" the limited meaning which the defendant ascribs to it, they would not have said that they adopted the "provisions of the Senate amendment with minor clarifying changes." I therefore conclude that the defendant was a "representative of employees" within the meaning of section 186(b).

The defendant also contends that even if he were a "representative of employees" he is not guilty of a crime because the Government must prove that he "wilfully" violated section 186(b) and it has failed to do so. See *Labor Management Relations Act, 1947*, § 302(d), 29 U.S.C. § 186(d).

In my opinion a wilful violation of section 186(b) is proved if it is shown that a "representative of any employees who are employed in an industry affecting commerce" received or accepted money from the employer of such employees with knowledge (1) 155 — that he was receiving or accepting money, and (2) that the person who was giving him the money was an employer of employees that he represented. It seems clear that the defendant knew that he was receiving money in December, 1950 and in April and December, 1951. Since 1946 he had received money from James C. Kennedy under similar circumstances. The envelopes given to him in December, 1950 and December, 1951 had $1,000 written lightly in pencil in the upper righthand corner. In November 1952, Ruth M. Kennedy, an officer of the employer companies, who had planned and prepared for the payments to the defendant, testified under subpoena before the New York State Crime Commission, sitting in executive session. One week later the defendant appeared at her office. He was seeking James C. Kennedy, the

disburser of the payments. According to her testimony, which I believe trustworthy, the following took place:

"Q. What was your conversation with Mr. Ryan, please?

"A. He came in and told me that he was looking for my nephew, James C. Kennedy, and I said as a matter of fact I was looking for him myself, and he went on to say that he wanted to know from—what had been reported by us to the State Crime Commission.

"I told Mr. Ryan that I couldn't tell him anything about what had taken place at the Crime Commission because we had been, as I believe it, sworn under oath of secrecy, and he then said to me it was income tax in one way and perjury the other, and I said 'Well, why don't you just tell the truth? It is rather a serious business'—and that was it. I said I was sorry I couldn't help him and he said, 'Good-by' and left the office."

156 The evidence relating to the 1950 and 1951 transactions was sufficient to justify the conclusion that the defendant had knowingly received and accepted the money specified in the indictment.

I also believe that the evidence proves that the defendant knew that the person who was giving him money was an employer of employees that the defendant represented. It was proved that the defendant was in 1950 and 1951, and for many years prior to that, had been president of the ILA and of the Atlantic Coast District of the ILA. It was also proved that Kennedy & Son and Daniels & Kennedy, Inc., were members of the NYSA who employed longshore labor and were bound by contracts entered into by the ILA and NYSA. Furthermore, it was established that the envelopes containing the money that James C. Kennedy handed to the defendant from 1946 to 1951 (except that of April, 1951) bore the name of Kennedy & Son or Daniels & Kennedy, Inc.; and that after the defendant had discovered that James C. Kennedy had testified before the New York State Crime Commission in 1952 he came to the office of Daniels & Kennedy, Inc. and asked to see James C. Kennedy. When in addition to these facts, no person relationship is shown which would lead the defendant to expect gifts from James C. Kennedy, Kennedy & Son, or Daniels & Kennedy, Inc., the inference that the defendant knew that he was receiving money because he was a union official who represented men employed by the person who was giving him the money is the only one that can reasonably be drawn. I therefore find that the defendant knew that the person who was giving him money was an employer of employees that he represented, and that the Government has proved a wilful violation of section 186(b).

The defendant objects to section 186(b) on constitutional
157 grounds. He urges that section 186(b) is repugnant to the due process clause of the Fifth Amendment for two reasons. First, the words "any representative of any employees" are so vague and indefinite that reasonable men cannot know whether they are within the class of persons who may not engage in the described activities. Second, section 186(b) is beyond the power of Congress to enact because it is unreasonable to prohibit a person who is a union official from receiving money from a person who is an employer of the men whom the official represents just because one is a union official and the other is an employer of men whom the official represents.

The "void for vagueness" argument cannot be sustained. The defendant was not a sergeant-at-arms of a union; nor was he a president who did nothing more than preside at meetings, or an attorney who represented the union. He was an officer of the union with a high degree of discretion and responsibility who was actively concerned with the relations between his union and the companies from which he received the money. He was president of the ILA and the Atlantic Coast District of the ILA, and as a member of the Wage Scale Committee he represented the employees who were members of these and affiliated unions in the collective bargaining process. Under these circumstances it would be idle speculation for this Court to predict whether a sergeant-at-arms, a president who does nothing but preside at meetings, or an attorney of the union could be considered a "representative of employes" under section 186(b). If such questions are presented under section 186(b), the Court can then rule on them.

That there may be marginal cases presenting difficulties of factual
158 demarcation is not sufficient ground for striking down a statute for ambiguity. *United States* v. *Petrillo*, 332 U. S. 1 (1947); *Robinson* v. *United States*, 324 U. S. 282 (1945). The underlying principle is that no man shall be held criminally responsible for conduct which he could not reasonably understand to be proscribed. *Jordan* v. *DeGeorge*, 341 U. S. 223 (1951). The Constitutional requirement of definiteness is fulfilled where the statute gives a person of ordinary intelligence fair notice that his contemplated conduct is forbidden by its terms. *United States* v. *Harriss*, 347 U. S. 612 (1954). And if the statute is plainly directed to a general class of cases, it will not be struck down as vague even though marginal cases pose questions of doubt. *United States* v. *Harriss*, *supra* at 618.

Here the defendant was clearly a representative of the employees described in the statute. They were employed by an in-

dustry affecting commerce." There is no statutory magic to the term "representative". It is a word of common usage. I have already indicated why this term was of general import and not limited, as the defendant has argued, to the judicial entity recognized for collective bargaining purposes. And by adding the word "any" before "representative", the draftsman broadened the scope as far as could be, see *Ex Parte Collett*, 337 U. S. 55, 58 (1949), subject only to the specific exceptions defined by the statute itself in the following subsection, Section 186(c).

The defendant was one of the most important individuals representing these employees. He acted for and in behalf of the employees, whose employer was the disburser of the funds he received and accepted, in matters involving discretion and responsibility. He was clearly within the terms of section 186(b). Any reasonable person should have so understood.

159 Defendant's argument that section 186(b) is beyond the power of Congress to enact because it is unreasonable is without merit. The Court does not have the power to decide whether an act of Congress is or is not reasonable and to strike it down if it believes that it is unreasonable. The Court can strike down an act of Congress only when it can say that there was no reasonable basis for the act. See *United States* v. *Carolene Products Co.*, 304 U. S. 144, 152 (1938).

I cannot make such a finding with respect to section 186(b). I cannot say that it was unreasonable for Congress to believe that the flow of commerce would be burdened or obstructed if the effectiveness of collective bargaining were impaired; and that its effectiveness would be seriously impaired if representatives of employees received or accepted money or things of value from the employers of the workers whom they represented. Indeed, I believe that the right of employees to bargain collectively, recognized and protected by the *Labor Management Relations Act, 1947* is safeguarded by section 186(b) because removal of the opportunity for personal profit between the employer and the employee representative tends to preserve the integrity of the collective bargaining process. As such it bears a reasonable relationship to the avoidance of industrial strife and is not violative of the due process clause of the Fifth Amendment. See *National Labor Relations Board* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1, 41-43 (1937).

Finally, the defendant attacks the validity of section 186(b) as beyond the power of Congress to enact under its power over interstate and foreign commerce. There is no justification for this argument.

The commerce power has been held sufficiently broad to war-

rant Congressional intervention in the field of labor manage-
160 ment relations. *National Labor Relations Board* v. *Jones & Laughlin Steel Corp., supra.* Mr. Chief Justice Hughes put the matter succinctly in this case, at pp. 41-42:

> "* * * When industries organize themselves on a national scale, making their relation to interstate commerce the dominant factor in their activities, how can it be maintained that their industrial labor relations constitute a forbidden field into which Congress may not enter when it is necessary to protect interstate commerce from the paralyzing consequences of industrial war? We have often said that interstate commerce itself is a practical conception. It is equally true that interferences with that commerce must be appraised by a judgment that does not ignore actual experience."

The preamble to the very Act of Congress here involved makes manifest the legislative intent to regulate labor management relations in order to prevent obstructions to the "free flow of commerce." The "Findings and Declarations of Policy" set forth in section 101 of the *Labor Management Relations Act, 1947*, 29 U. S. C. § 141 et seq. read as follows:

> "Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed."

161 It has already been indicated that section 186(b) cannot be said to be an unreasonable means of achieving the ends of industrial peace and facilitating the free flow of commerce. It follows, therefore, that this provision is not open to attack on the ground that Congress was powerless to enact it in the exercise of its power over interstate and foreign commerce. Cf. *American Communications Association* v. *Douds*, 339 U. S. 382, 390-393 (1950).

The defendant is found guilty as charged under Counts 1, 2 and 3 of the indictment and is directed to surrender forthwith for the purpose of pre-sentence investigation. Sentence will be imposed on February 1, 1955, at 10:00 A. M.

January 24, 1955.

EDMUND L. PALMIERI,
U. S. D. J.

162 IN UNITED STATES DISTRICT COURT

JUDGMENT—February 1, 1955

On this 1st day of February, 1955, came the attorney for the government and the defendant appeared in person and by counsel.

163-165 *Judgment*

It is Adjudged that the defendant has been convicted upon his plea of not guilty, and a finding of guilty by the Court (jury having been waived) of the offense of unlawfully, wilfully and knowingly receiving and accepting money from the employer of employees who were employed in industry affecting commerce, while representing said employees. Title 29, Section 186 (b) (d) U. S. Code as charged in three counts and the Court having asked the defendant whether he has anything to say why judgment should not be pronounced, and no sufficient cause to the contrary being shown or appearing to the Court,

It is Adjudged that the defendant is guilty as charged and convicted.

It is Adjudged that the defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of SIX (6) months on each of counts 1-2-3 to run concurrently with each other and Fined the sum of $2,500. to cover all three counts. Defendant ordered to stand committed until fine shall be paid, or he is otherwise discharged according to law. Execution of prison sentence and payment of fine stayed pending appeal. Bail bond ordered continued during such stay.

It is Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the copy serve as the commitment of the defendant.

EDMUND L. PALMIERI,
United States District Judge.

Filed, U. S. District Court, S. D. of N. Y., Feb. 1, 1955.

166 United States Court of Appeals
For the Second Circuit

October Term, 1954

No. 322

Docket No. 23546

Argued May 11, 1955

UNITED STATES OF AMERICA, APPELLEE

v.

JOSEPH P. RYAN, DEFENDANT-APPELLANT

OPINION—July 1, 1955

Before: L. HAND, SWAN and FRANK, *Circuit Judges.*

Appeal from a judgment of the United States District Court for the Southern District of New York, entered by Judge Palmieri, after a trial without a jury. Reversed.

J. Edward Lumbard (Arnold Bauman, George H. Bailey, of counsel) for appellee.

Waldman & Waldman (Louis Waldman, Seymour M. Waldman and Martin Markson, of counsel) for appellant.

Defendant-Appellant, Joseph P. Ryan, President of the International Longshoremen's Association (hereafter called ILA) was indicted, under 29 U.S.C. Section 186(b) and (d)—61 Stat. 302(b) and (d)—on three counts, in that, on three separate occasions, he unlawfully, wilfully and knowingly received sums in the aggregate of $2,500, from corporations employing members of the ILA.
167 With the consent of defendant, the case was tried without a jury. There was evidence that, on three occasions during 1950 and 1951, when defendant was president of the ILA and its Atlantic Coast District, he was visited by James C. Kennedy, president of Daniels & Kennedy, Inc. and of J. Arthur Kennedy & Son, Inc., and was given envelopes containing money. There was also evidence that the two corporations headed by Kennedy employed longshoremen who were members of the ILA. The trial judge found that the defendant knew he was receiving money, knew that he was receiving it from one who employed workers represented by the union of which he was president, and knew he was receiving it because he was a union official. The judge, holding defendant guilty on all counts, sentenced him to imprisonment for six months on each

count (the sentences to run concurrently) and fined him $2,500. Defendant has appealed.

61 Stat. 136-162. The Labor Management Relations Act (the so-called Taft-Hartley Act) was enacted in 1947. Section 101 of that Act amended the National Labor Relations Act originally enacted in 1935. Section 2 of the National Labor Relations Act, as thus amended, reads in part as follows: "When used in this Act . . . (4) The term 'representatives' includes any individual or labor organization." (61 Stat. 137).[1]

Section 501 of the 1947 Act (61 Stat. 161) reads in part as follows: "When used in this Act . . . (3) The terms 'commerce,' 'labor disputes,' 'employer,' 'employee,' 'labor organization,' '*representatives*,' 'person,' and 'supervisor' shall have the same
168 meaning as when used in the National Labor Relations Act as amended by this Act."[2]

Section 302 of the 1947 Act (61 Stat. 157-158) reads as follows:

"*Restrictions on Payments to employee representatives.*

"(a) It shall be unlawful for any employer to pay or deliver, or to agree to pay or deliver, any money or other thing of value to any representative of any of his employees who are employed in an industry affecting commerce.

"(b) It shall be unlawful for any representative of any employees who are employed in an industry affecting commerce to receive or accept, or to agree to receive or accept, from the employer of such employees any money or other thing of value.

"(c) The provisions of this section shall not be applicable (1) with respect to any money or other thing of value payable by an employer to any representative who is an employee or former employee of such employer, as compensation for, or by reason of, his services as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement or release of any claim, complaint, grievance or dispute in the absence of fraud, or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: *Provided*, that the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; or (5) with respect to money or other thing of value paid to a trust fund estab-

lished by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families and dependents jointly with the employees of other employers making similar
169 payments and their families and dependents): *Provided*, that (A) such payments are held in trust for the purpose of paying, either from principal or income or both for the benefit of employees, their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) The detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of the employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities.

"(d) Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than $10,000 or to imprisonment for not more than one year, or both.

"(e) The District Courts of the United States and the United States Courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of Section 17 (relating to notice to opposite party) of the Act entitled 'an Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes,' approved

October 15, 1914, as amended (U.S.C., title 28, sec. 381), to restrain violations of this section, without regard to the provisions of section 6 and 20 of such Act of October 15, 1914, as amended (U.S.C., title 15, sec. 17, and title 29, sec. 52), and the provisions of the Act entitled 'An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes,' approved March 23, 1932 (U.S.C., title 29, secs. 101-115).

"(f) This section shall not apply to any contract in force on the date of enactment of this act, until the expiration of such contract, or until July 1, 1948, whichever occurs first.

"(g) Compliance with the restrictions contained in subsection (c)(5)(B) upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits."[3]

FRANK, Circuit Judge:

1. Defendant correctly asserts that there was no evidence of extortion (or the like). Accordingly, he argues thus: Previous to the enactment of Section 302(b), extortion had already been covered by the so-called Anti-Racketeering Act, 18 U.S.C. 1951; section 302(b) should not be construed to include the receipt of money or property, absent extortion, since then it would be, or come close to being, void for vagueness, and a court should, if possible, avoid an interpretation of a statute that would make it void or put it on the edge of the unconstitutional.

Defendant also argues that Section 302(b) should not be construed to include representatives of union because then it would overlap state statutes. Here defendant cites Jerome v. United States, 318 U.S. 101, 104-105, where the court said: "Since there is no common law offense against the United States . . . , the administration of criminal justice under our federal system has rested with the states, except as criminal offenses have been explicitly prescribed by Congress. We should be mindful of that tradition in determining the scope of federal statutes defining offenses which duplicate or build upon state law. In that connection, it should be noted that the double-jeopardy provision of the Fifth Amendment does not stand as a bar to federal prosecution though a state conviction has already been obtained . . . . That consideration gives additional weight to the view that where Congress is creating offenses which duplicate or build upon state law, courts should be reluctant to extend the deferred offenses beyond the clear requirements of the statute."

We have not found it necessary to consider either of those contentions, since we rest our decision on another ground. 3. Defendant's principal argument is that he was not a "representative of any employees" within the meaning of Section 302(b). His reasoning is as follows:

> Section 501(3) provides that "when used in this Act, the term 'representative' is to have the same meaning as when used in the National Labor Relations Act as amended by this Act." Section 2 of the National Labor Relations Act, as thus amended, provides that, when used in that amended Act, the "term
> 172 'representative' includes any individual or labor organization."
>
> Throughout the NLRA, as thus amended, "representative" is used, with reference to a representative of employees, as a word of art, to mean solely a labor organization or an individual (or individuals) designated by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative.
>
> This interpretation of "representative" in Sec. 302(b) is in complete accord with the primary purpose of Congress in enacting Sec. 302 as an entirety, i.e., to render unlawful the creation of union welfare funds unless restricted as provided in Sec. 302(c)(5).
>
> In the case at bar, a union, ILA, was the exclusive bargaining representative. Consequently, here Sec. 302(b) could apply to the union only, not to defendant who was but a representative of the representative, i. e., of the union.
>
> Accordingly, defendant did not violate Subsection (302(b).

The government, on the other hand, contends that "representative" in Subsection 302(b) must be given its everyday, commonplace meaning; that, therefore, it includes a representative of a union; and that defendant comes within that definition. If subsection 302(b) stood alone, that contention would be highly persuasive.

173 That subsection, however, is not an island but part of a statutory continent. To understand the words "representative of any employees" in subsection (b) of Section 302, we must look to Section 501(3) which instructs us that "representative" in Section 302(b) has the same meaning "as when used in the amended National Labor Relations Act." In Section 2(4) of that Act, we find the "term 'representative' includes any individual or labor organization." We thereby learn what "representative" includes. To understand what it means, with reference to a "representative of any employees," we must heed Section 501(3) and turn to the

many sections of the amended NLRA where "representative" is so used.[5] We discover that there invariably it means a "representative" selected by a majority of the employees, in an appropriate unit, as their exclusive bargaining representative. (Only once is it used otherwise, i.e., in Section 2(1) where, defining "person," the Act includes a "legal representative".) The question then arises whether an "individual" can be an exclusive bargaining representative. Clearly he can. The Labor Board has so interpreted the Act.[6]

We see nothing in the exception clauses of Section 302(c) at all at odds with defendant's contention: Clauses (2), (4) and (5) obviously are not. Clauses (1) and (3) apply to an individual employee who is also an exclusive bargaining agent—and thus himself a "representative." We think it significant that when, in the 1947 Act, Congress wanted to refer to individuals acting for a union, it spoke of them not as "representatives" of a "labor organization," but as "agents" of such an organization; see Section 8(b)—61 Stat. 141—of the amended N.L.R.A., a subsection added by the 1947 Act.

174

The government argues that, in every instance where "representative" is used in the amended N.L.R.A. to designate a "representative" of employees, the word is qualified by the word "bargaining" or by the phrase "subject to Section 9 (a)." That is not true: Section 8(b)(4)(B) and Section 8(d)—61 Stat. 141-142—use the words "representative of his employees" or "representative of the employees" without any qualification, and Section 1 (61 Stat. 137 and Section 7 (61 Stat. 140) speak of "representatives of their own choosing."

The following further suggestion is advanced: (1) As defined in Section 2(5) of the N.L.R.A.,[6a] "labor organization" can be in-

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[5] See Sections 1, 2, 7, 8a(3), 8(a)(5), 8(b), 8(b)(4), 8(d), 9(a), 9(b), 9(c)(1) and 9(g).

[6] See The Robinson-Ransbottom Pottery Company, 27 NLRB 1093 (1940); The Louisville Sanitary Wiper Company, Inc., 65 NLRB 88 (1945). These cases arose under the NLRA before its amendment in 1947; but that amendment did not change the statutory definition of "representative."

[6a] This subsection reads as follows: "The term 'labor organization' means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work."

terpreted to cover not only an exclusive bargaining agent but also either any group or any individual whatever to whom any employees give authority to deal with their employer "concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." (2) Accordingly, since Section 2(4) provides that "representatives" include "any individual or labor organization," an individual who is not an exclusive bargaining agent can be a "representative."

We reject that suggestion for these reasons: (1) It involves a straining of the language of Section 2(5) to have the term "labor organization," which normally imports a collective body or group, cover an individual. (2) More important, if "labor organ-
175 ization" includes an individual, then Section 2(4) uses the word "individual" redundantly when it says that "representatives" include "any individual or labor organization." For the suggested interpretation of Section 2(4) would cause it to read, in effect, thus: "The term 'representatives' include (a) an individual or (b) an individual or a group having authority from any employees to deal with their employer."

3. The government makes much of the legislative history. But, so far as it illuminates, it tends strongly to support defendant's contention. This appears from the following:

A fore-runner of the 1947 Act was the so-called Case Bill, H.R. 4908, reported on the floor of the House of Representatives on January 28, 1946 (92 Cong. Rec. 490). After this bill passed the House, on February 7, 1947 (Cong. Rec. 1069, 1118), the Senate Committee reported it on April 15, 1946. On May 16, 1946, Senator Byrd submitted an amendment (92 Cong. Rec. 4809) entitled "Restrictions on Payments to Labor Organizations." This Byrd amendment (except for the definition of "representative" noted infra) is substantially the same as the present Section 302. The Case Bill, including the Byrd amendment, was passed by Congress, but was vetoed by the President, and Congress failed to over-rule the veto.

176 One year later, as part of the comprehensive labor bill then under consideration, an amendment similar to the Byrd amendemnt was introduced in the House but failed of passage. The Senate Labor Committee reported out the comprehensive labor bill without any such amendment. However, five members of that Committee, including Senators Taft and Ball, filed a Supplemental Report (to the Committee's report) in which they urged an amendment quite like the Byrd amendment of the previous year. On May 7, 1947, Senator Ball, for himself and three other Senators, introduced the amendment on the Senate Floor (93 Cong. Rec. 4667), and it was adopted as Section 302 of the Senate bill.

Like the Byrd amendment, Section 302, as adopted by the Senate, included the following subsection (g):

> "For the purposes of this section, the term 'representative' means any labor organization which, or any individual who, is authorized or purports to be authorized to deal with an employer, on behalf of two or more of his employees, concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and for the purposes of section 301 includes any other organization or fund of which some of the officers are representatives or are members of a labor organization or are elected or appointed by a representative."

This definition was susceptible of the interpretation that "representative" included a union official. Senator Ball, explaining that paragraph, (g), said (93 Cong. Rec. 4678): "Subsection (g) is simply a definition of the term 'representative' as used in the section, which is required to be somewhat different from the definition of 'representative' in the National Labor Relations Act."
177

But the Joint Conference Committee, which ironed out the differences between the House and Senate bills, significantly omitted that definition and, instead, added the word "representative" to the list of terms defined by Section 501(3) as having the same meaning as when used in the amended N.L.R.A. In this form, the bill passed both houses of Congress and was enacted over a Presidential veto.

Before the Joint Conference Committee made that change, Senator Ives, in debate, had said: ". . . I . . . should like to point to section (b) . . . . I wish to inquire whether that could be construed in any way as affecting Christmas presents or birthday presents or anything of that type. The language is rather broad, and it appears to me to be vague." (93 Cong. Rec. 4748). Senator Ives later was a Senate member of the Joint Conference Committee which made the change.

Most of the Congressional debates and Committee reports concerning Section 302, and concerning the Byrd amendment in the previous Congress, were devoted to the subject of the regulation of union welfare funds. They show that this section was prompted by the demand of the United Mine Workers Union for an employer contribution to a welfare fund of 10¢ per ton of coal, a fund administered by the union alone with no restrictions on its discretion. [7]

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[7] Also discussed was a limitation on check-offs to labor organizations.

The following statements from the debates on the Ball amendment are illustrative:

178 (Senator Ball): "Mr. President, the pending amendment . . deals with so-called welfare funds, which are becoming increasingly prominent in negotiations between unions and employers. . . . Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds. . . ." (93 Cong. Rec. 4678).

(Senator Byrd): "It [the amendment] has a specific purpose, which is to prohibit the labor unions from requiring welfare funds to be paid into the treasuries of the labor unions." (93 Cong. Rec. 4678).

(Senator Taft): "The occasion of the amendment was the demand by the United Mine Workers of America that a tax of 10¢ a ton be levied on all coal mined, and that the tax levied be paid into a general welfare fund to be administered by the union for practically any purpose the union considered to come within the term 'welfare.' . . . The purpose of the amendment is to require that the fund shall be established in definite detailed form. . . . The purpose is to prevent the abuse of welfare funds. . . . This amendment is, in effect, a provision to prevent the abuse of the right to establish such funds by collective bargaining. . . ." (93 Cong. Rec. 4746-47).

Sen. Rep. 105 on S. 1126, Supplemental Views, p. 52 (Senators Taft, Ball, Donnell, Jenner, H. Alexander Smith): "Limitation on Abuse of Welfare Funds. . . . The necessity for the amendment was made clear by the demand made last year on the part of the United Mine Workers. . . ."

179 The government points to a few isolated expressions in the Supplemental Report in 1946, and during the debates in 1946 and 1947,[8] indicating that Section 302(b) may have been intended (1) to apply to union representatives and (2) to cover extortion.[9] Those relative to "extortion" can be read as characterizing such demands on employers as those made by the United Mine Workers for the establishment of unregulated union trust funds. Thus when Senator Taft (93 Cong. Rec. 4746) mentioned "a case of extortion or a case where the union representative is shaking down the

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[8] Many of them emanated from Senators or witnesses interested in defeating Section 302.

[9] The Supplemental Report (1946) said: "The amendment makes extortion illegal."

Senator Taft in 1947 (93 Cong. Rec. 4746) spoke of "a case of extortion or a case where the union representative is shaking down the employer."

employer," the context suggests that he had in mind the alleged practice of some unions of bargaining for their own benefit rather than for the benefit of the employees they represented. These unions would exert marked pressure to gain employer contributions to an uncontrolled fund; it was said that such funds would then be used as union "slush" or strike funds. The grant of such employer contributions, it was urged, would be accepted by the union as the price of a collective bargaining agreement in lieu of other benefits which the workers should have received. This fear was expressed by Senator Ball, in introducing his amendment, as follows:

> "Mr. President, the sole purpose of the amendment is not to prohibit welfare funds, but to make sure that they are legitimate trust funds, used actually for the specified benefits to the employees of the employers who contribute to them and that they shall not degenerate into bribes. . . . I have heard of many cases in which unions have even relinquished wage demands in order to secure a welfare fund with a percentage of the payroll paid into the welfare fund established, and employers have frequently agreed to that procedure." (93 Cong. Rec. 4678 (1947)).

180-182 In any event, the significant fact is that all those expressions occurred before the Joint Conference Committee had deleted paragraph (g) of Section 302 (above quoted) separately defining "representatives," and had substituted the definition now contained in Section 501.[10]

Since defendant was not a "representative" within Section 302(b) as we interpret it, we reverse with directions to dismiss on the merits.

Reversed.

183 HAND, Circuit Judge (dissenting).

As my brothers say, §142(3) of Chapter 49, U.S. Code; which is part of Subchapter I of the "Labor-Management Relations Act, 1947," defines the term, "representative," by reference

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[10] The Joint Conference Committee reported that Section 302 of the Senate bill "was adopted with minor clarifying changes." We see no conflict between the significance we have attached to the changes made by that Committee and the report's description of those changes as "minor." For, in relation to the general purpose of the section—the regulation of union welfare funds—the changes are of little import, and only if the Section is applied to other kinds of payments do they assume importance.

to its use in Subchapter II—the National Labor Relations Act. It also defines "labor organizations" in the same way. Although the word, "representative," is repeatedly used in Subchapter II, I can find no definition of it anywhere except that §152(4) says that it includes "any individual or labor organization"; from which it follows that the Act understands that "representatives" of employees may be other than a "labor organization." Section 152(5) defines a "labor organization" as "any organization of any kind" (which I take to require a group of individuals) "or any agency or employee representation committee or plan in which employees participate and which exists for the purpose in whole or in part of dealing with employers, concerning grievances, labor disputes, wages, rates of pay, hours of employment or conditions of work." I should suppose that, read as it should be as in contrast to "any organization of any kind," this last language would include an individual to whom employees give authority to deal with their employer. Therefore I cannot see any escape from saying that a single person may be a "labor organization"; and, if so, then there may be "individuals" who are "representatives" of employees and yet who are not authorized to negotiate with employers. Hence, I can see no reason for denying what to me is the natural meaning of "representative," which would cover any official, or at any rate the president, of a union. Of course §186 might still be confined to
184 payments made into the union treasury, but that must be for other reasons than that they are payments to a "representative." I of course agree that the section does cover payments into the union treasury (subsections (c)(4) and (c)(5) prove that), but the accused must go further, and does; for he argues that the section covers no payments but those made in the course of negotiation and to a bargaining agent of the union for the union. But I start with the premise, that, so far as concerns definitions, there is no reason why we should not understand the word in its ordinary sense; and it is certainly irrelevant that the Act uses it in most instances—for example, in §158(d)—in a limited sense.

However, I go further, because I find evidence in subsection (c) that it does not exclude union officials, though they are not engaged in bargaining. That subsection is the provision that excepts payments which without it would fall within subsections (a) and (b). Subsections (c)(4) and (c)(5) are indeed confined to payments made to a union, and I think that the same is true of subsection (c)(2), although that is not quite so certain. On the other hand subsections (c)(1) and (c)(3) presuppose that §186 covers payments into the pocket of a union official for his own use; because, since, as I have just said, the purpose of subsection (c) is to state exceptions to the preceding subsections (a) and (b), the payments that subsection (c) covers would fall within (a) and (b) except

for the exception. Hence, subsections (a) and (b) do cover payments not made into the union treasury, but directly to a
185 "representative," who need not himself have any authority whatever to negotiate for the union. The accused answers that these subsections are only to protect those, who may be negotiating for the union, when they take their wages or have an ordinary market transaction with the employer. So far as the "representatives" are only the bargaining agents of a union, that construction makes the subsections only cautionary, and does not answer the objection that, not only are they called exceptions, but they are indiscriminately mixed with indubitable exceptions. On the other hand, if they are treated as true exceptions (as they may be if confined to cases where the individual negotiators are themselves the union) although the formal difficulty is avoided, the occasions on which the subsections would apply are so much reduced that it is most unlikely that Congress would have thought it worth while to provide for them. It must very rarely be true that one or two of three individuals are in fact a "labor organization"; and it is substantially impossible, I submit, that Congress would have deemed the possible accumulation of the union funds of such "labor organizations" an appreciable evil. For the foregoing reasons I do not think that there is the least textual reason to confine §186 to payments made to union "representatives" into the union treasury as a result of bargaining negotiations.

As I have said, that was indeed one of the objects of the Act, and it was particularly present in the mind of Congress at the time, for in 1947 the "Mine Workers Union" was attempting
186 to collect a large "war chest." But that does not mean that prevention of such accumulations was the only object of the Act. Moreover, in order to affirm the conviction it is not necessary to suppose that §186 was directed against the bribery of union officials, although, if I am right, it certainly does cover bribery. (Incidentally, if bribery had been the target, the penalty would almost certainly have been made more than a year's imprisonment.) An altogether adequate purpose, and one which does not involve the textual difficulties I have discussed, is that in addition to preventing employers from helping to fill a union's "war chest," Congress wished to prevent employers from tampering with the loyalty of union officials, and disloyal union officials from levying tribute upon employers. The first was the situation at bar; the employer did not bribe the accused; it did what has been done, time out of mind, when one person, knowing that he is likely to have continuous dealing with another, in which the second person will be acting as a fiduciary, wishes to insure a friendly approach to the fiduciary; and makes him presents or does him favors, or in other and less palpable forms tries to turn the edge of his

allegiance. Although §186 deals only with the grosser forms of this evil, it presupposes a more than ordinary fiduciary defection. A union official has a double loyalty: first, he owes it to the members of his union, who have chosen him to represent them; next, he owes it to those employees, who are not members, but in favor of whom the law has nevertheless imposed on him an equal duty.

Surely, it was altogether likely that Congress should wish
187 to put an end to such abuses by both parties—the unions and the employers.

Last is the question of the history of the section's passage through Congress. The principal discussion was indeed about contributions to a union's treasury; and that was true as well of the "Case Bill," —the predecessor of the Act before us—as of the Act itself. The absence of much discussion about preventing the kind of offence here prosecuted, seems to me not at all surprising; there could have been no opposition to it, except that in fact made: it might cover innocent payments. Besides, the question here at issue did not wholly escape notice. Take, for example, what Senator Taft said about §186(a): "That is, it may be said, in a case where the union representative is shaking down the employer." Or consider Senator Ives's inquiry whether § 3(b) "could be construed in any way as affecting Christmas presents, birthday presents or anything of that type." Both he and Senator Pepper voted against the bill, presumably because they thought that for this reason it went too far. I do not forget that the section defining "representative," was at that time more specific than §142(3), which eventually supplanted it in conference; but the amendment makes rather against the accused than in his favor, if we treat subsections (4) and (5) of §152 as incorporated in §142(3). For, although the supplanted section did contain the word "individual," as well as "labor organization," it limited it to an "individual" who was, or claimed to be, authorized to deal with an employer; and §152(4) does not do so, as I have said.

188 However, even if the debates threw more light than they do on the meaning of the words, I should hesitate to accept them as an authoritative gloss. It is one thing to look for that purpose to the reports of one or both of the Houses of Congress, for it is not unreasonable to believe that those members, who are not content to let the words speak for themselves, may have relied upon the report as authoritative; and in any event that is well settled law.* On the other hand, although it is true that courts have repeatedly mentioned the debates that attended the passage of a bill as relevant to its interpretation, the decisions are so much at variance that I find it impossible to extract any safe principle. The words of the sponsor of a bill are presumptively entitled to be considered, * * although it is impossible to know how far those

who voted for it may have acted on the faith of them; but the remarks made in general debate are not to count. * * *

189 There does indeed remain the question raised by Senator Ives and Senator Pepper: i.e. whether § 186 forbids a Christmas present to a union official who chances to be a friend, or even a relative, of the employer. To draw lines is always difficult; and the one sure way to miss the meaning of a statute is to read the words out of their context and as you find them in the dictionary. Nearly every statute has its penumbre, and this one is not an exception; but it would be most unreasonable to defeat a part of its purpose, because there is no *a priori* rule for deciding when a payment was purely donative, and when it was actuated by the prospect of possible benefits to come.

As my view is not to prevail, I shall not discuss the other objections that the accused raises, except to say that I have considered them, and that they have not convinced me that any error was committed that would justify a reversal. I would affirm the conviction.

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* Binns v. United States, 194 U.S. 486, 495
Lapina v. Williams, 232 U.S. 78, 90
United States v. St. Paul M. & M. Ry., 247 U.S. 310, 318
Duplex Printing Press Co. v. Deering, 254 U.S. 443, 474; 475
Wright v. Vinton Branch, 300 U.S. 440, 463, 464
Schwegmann Bros. v. Calvert Distillers Corp., 341 U.S. 384, 394, 395

** United States v. St. Paul M. & M., supra (247 U.S. 310, 318)
Duplex Printing Press Co. v. Deering, supra (254 U.S. 443, 474, 475)
McCaught v. Hersey, 283 U.S. 488, 493, 494
United States v. Great Northern Ry., 287 U.S. U.S. 144, 154, 155
Wright v. Vinton Branch, supra (300 U.S. 440, 463, 464)
Schwegmann Brothers v. Calvert Distillers Corp., supra (341 U.S. 384, 394, 395)

*** United States v. Trans-Missouri Freight Association, 166 U.S. 290, 318, 319
Dunlap v. United States, 173 U.S. 65, 75
Lapina v. Williams, supra (232 U.S. 78, 90)

190 United States Court of Appeals for the Second Circuit

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

JOSEPH P. RYAN, DEFENDANT-APPELLANT

JUDGMENT—July 1, 1955

Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

On consideration whereof, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is reversed and action remanded with directions to dismiss on the merits in accordance with the opinion of this Court.

/S/ A. DANIEL FUSARO,
Clerk.

191 Clerk's Certificate to foregoing transcript omitted in printing.

192 SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI.—Filed October 17, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Second Circuit is granted. The case is transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Mr. Justice Harlan took no part in the consideration or decision of this application.

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JUL 29 1955
HAROLD B. WILLEY, Clerk

No. 281

In the Supreme Court of the United States

OCTOBER TERM, 1955

UNITED STATES OF AMERICA, PETITIONER

v.

JOSEPH P. RYAN

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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